(2)

Supreme Court, U.S.
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No. 93-1852

In The

Supreme Court of the United States

October Term, 1993

MARY OWENS and CLARENCE OWENS,

Petitioners,

v.

TERRY LYNN HEWELL, et al.,

Respondents.

Petition For A Writ Of Certiorari To The United States Court of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION BY RESPONDENTS HEWELL AND THE CITY OF LOGANVILLE

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June 20, 1994

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QUESTION PRESENTED

Whether the District Court properly applied Fourth Amendment law in granting a dismissal under Fed. R. Civ. P. § 12(b)(6) to a police officer and municipality in a false arrest action brought by one who was given a traffic citation for failure to yield to an emergency vehicle while she was in the hospital following an accident with that police vehicle, driven by respondent Hewell.

LIST OF PARTIES

The parties to the proceedings below and in this Court are the petitioners, Mary Owens and Clarence Owens, and the respondents, Terry Lynn Hewell, Brian George, and the City of Loganville, Georgia.

TABLE OF CONTENTS

Page

Question Presented i

List of Parties ii

Table of Contents iii

Table of Authorities v

Opinions Below 1

Statement of Jurisdiction 2

Constitutional Provision and Statute Involved 2

Statement of the Case 3

Summary of the Argument 5

Argument 6

Conclusion 11

Appendix A:
Decision of the United States Court of Appeals for the Eleventh Circuit affirming decision of the United States District Court for the Northern District of Georgia (January 7, 1994) 1a

Appendix B:
Order and opinion from the United States District Court for the Northern District of Georgia (April 29, 1993) 3a

Appendix C:
Judgment from the United States District Court for the Northern District of Georgia (April 29, 1993) 10a

TABLE OF CONTENTS – Continued

Page

Appendix D:
Decision of the United States Court of Appeals for the Eleventh Circuit denying Petition and Suggestion for Rehearing En Banc (February 25, 1994) 12a

TABLE OF AUTHORITIES

Page

CASES

Albright v. Oliver, 510 U.S. ___, 62 L.W. 4078 (1994) 10

Apodaca v. Rio Arriba County Sheriff's Department, 905 F.2d 1445 (10th Cir. 1990) 7

Brower v. County of Inyo, 489 U.S. 593 (1989) 7

Campbell v. White, 916 F.2d 421 (7th Cir. 1990) 7

Florida v. Royer, 460 U.S. 491 (1983) 7

Roach v. City of Fredericktown, 882 F.2d 294 (8th Cir. 1989) 7

United States v. Hammock, 860 F.2d 390 (11th Cir. 1988) 7, 8

United States v. Hastamorir, 881 F.2d 1551 (11th Cir. 1989) 7, 8

United States v. Lunt, 732 F.Supp. 599 (W.D. Pa. 1990) 8

United States v. Marion, 404 U.S. 307 (1971) 9

United States v. Martin, 781 F.2d 671 (9th Cir. 1986) 8

United States v. Mendenhall, 446 U.S. 544 (1980) 7

STATUTES AND RULES

28 U.S.C. § 1254(1) 2

28 U.S.C. § 1367(c)(3) 3

42 U.S.C. § 1981 3

TABLE OF AUTHORITIES – Continued

Page

42 U.S.C. § 1983 ..... 2, 3, 10, 11

Fed. R. Civ. P. 12(b)(6) 3, 10

O.C.G.A. § 40-6-74 ..... 5, 9

U.S. Const. amend. IV ..... *passim*

U.S. Const. amend. V 3

U.S. Const. amend. XIV 3

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MARY OWENS and CLARENCE OWENS,

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v.

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Respondents.

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OPINIONS BELOW

The Court of Appeals affirmed the decision of the District Court without opinion, reprinted in the Appendix hereto, page 1a. The decision of the District Court also was not published, but has been reprinted in the Appendix hereto, page 3a.

STATEMENT OF JURISDICTION

The petitioners have invoked the jurisdiction of this Court pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

Fourth Amendment

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

42 U.S.C. § 1983. Civil action for deprivation of rights.

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

A. Proceedings Below

Plaintiffs' Complaint, filed on February 2, 1993, alleges that the defendants subjected Mary Owens to an unconstitutional arrest and prosecution, in violation of the Fourth, Fifth and Fourteenth Amendments to the United States Constitution. Count One, denominated as a "Civil Rights Action," seeks relief under 42 U.S.C. § 1981 and 42 U.S.C. § 1983 for these alleged unconstitutional deprivations.

Defendants Hewell and City of Loganville, by motion filed on March 10, 1993, moved to dismiss plaintiffs' civil rights claims pursuant to Fed. R. Civ. P. 12(b)(6), on the ground that plaintiffs' allegations, even if accepted as true, failed to state a claim upon which relief could be granted under the civil rights statutes. Defendant George filed a similar motion on March 12, 1993, and he also moved to dismiss on the ground of qualified immunity. Plaintiffs responded to these motions on April 5 and 15, 1993, respectively.

By order entered April 28, 1993, the Honorable Marvin H. Shoob granted the defendants' motions to dismiss. *See* Order of the District Court, Appendix hereto, page 3a. The District Court determined that plaintiffs' allegations and evidence, even if accepted as true, failed to state a civil rights claim for an unconstitutional arrest or malicious prosecution. The district court also ruled defendant George was entitled to qualified immunity, and that plaintiffs' state law claims should be dismissed upon the dismissal of plaintiffs' federal claims, as authorized by 28 U.S.C. § 1367(c)(3).

Final judgment was entered in favor of the defendants on April 29, 1993. Plaintiffs commenced an appeal to the Eleventh Circuit Court of Appeals on May 3, 1993. The Court of Appeals affirmed the judgment of the district court without opinion on January 7, 1994. *See* Judgment of the Eleventh Circuit Court of Appeals, Appendix hereto, page 1a. Plaintiffs then petitioned the Eleventh Circuit for rehearing, which it denied.

B. Statement of the Facts

This case arises from a motor vehicle accident involving the plaintiffs' vehicle and a police car driven by respondent Hewell (a City of Loganville police officer). As alleged in plaintiffs' Complaint, Ms. Owens was stopped at a stop sign on Brand Road at its intersection with Highway 78 in Loganville, Georgia. Ms. Owens attempted to proceed through the intersection, but was struck by Officer Hewell's patrol car as it proceeded west-bound on Highway 78. Plaintiffs' Complaint states that at the time of the collision Officer Hewell was allegedly pursuing a traffic violator, and that he was traveling at a high rate of speed with an activated blue light and head lights, but with no siren. In connection with plaintiffs' brief in opposition to the defendants' motion to dismiss, plaintiffs filed a partial transcript of the sworn testimony of Officer Hewell, wherein he stated he was pursuing a violator who had been clocked on radar at 68 miles per hour in a 45 mile per hour zone. Officer Hewell has never denied that he failed to activate his siren prior to the collision, either in sworn testimony or in his motion to dismiss.

Ms. Owens was injured in the collision, and she was admitted to a local hospital for treatment. Trooper Brian George of the Georgia State Patrol investigated the accident. Respondent George determined Ms. Owens had failed to yield the right-of-way to Officer Hewell, and he issued Ms. Owens a traffic citation charging her with a violation of O.C.G.A. § 40-6-74. That statute requires all motorists to yield on the approach of an emergency vehicle. According to Ms. Owens' affidavit, Trooper George gave her the ticket while she was in the hospital. Plaintiff does *not* allege that she was interrogated, detained, taken into custody, handcuffed, fingerprinted, photographed, booked-in, or in any way physically restrained by either Hewell or George in connection with the issuance of the ticket. She was simply informed that she was required to appear in traffic court on March 30, 1992.

Because Officer Hewell conceded he did not have his siren on prior to the accident, Ms. Owens successfully argued that the patrol car did not qualify as an "emergency vehicle" within the meaning of O.C.G.A. § 40-6-74, and the traffic charge was dismissed at trial. Based on these "facts" as alleged in the Complaint, petitioners claim Ms. Owens' civil rights were violated because she was subjected to an unconstitutional arrest.

SUMMARY OF ARGUMENT

Ms. Owens was not arrested or "seized" within the meaning of the Fourth Amendment. Her initial contact with Officer Hewell was the result of an unintentional

accident, not a deliberate traffic stop or "pull over." Neither that event nor the issuance of the traffic ticket by Trooper George qualify as arrests. None of the indicia of an arrest are alleged in plaintiffs' Complaint: Her freedom of movement was not blocked or impeded by the Trooper; no weapons were displayed; she was not surrounded by numerous officers; no hostile or coercive acts or words have been pled; she was not detained for any length of time; and she was never touched by an officer. The allegedly malicious prosecution of a charge which carries with it the possibility of future incarceration does not amount to a present seizure of the person.

ARGUMENT

THE DISTRICT COURT PROPERLY DETERMINED THAT PETITIONER MARY OWENS WAS NOT ARRESTED OR "SEIZED" WITHIN THE MEANING OF THE FOURTH AMENDMENT AND DISMISSED HER CLAIM AGAINST RESPONDENTS

In Count One of their Complaint, petitioners contend that Mary Owens was "arrested," that her arrest was "unlawful" and "illegal," and that it was made in the absence of any probable cause. Petitioners claim this "arrest" violated her rights under the Fourth Amendment.

The Fourth Amendment provides protection against unreasonable "seizures" of the person. U.S. Const. amend. IV. If made without any probable cause, an arrest is unreasonable and thus prohibited by the Fourth Amendment. While petitioner asserts that there was no

probable cause for her arrest in the circumstances of this case, respondents show that the issue before the Court with respect to the dismissal of plaintiffs' Fourth Amendment claim is whether the facts alleged by the petitioners state a claim that Ms. Owens was "seized" at all.

Petitioner claims that she was seized because she was given a traffic ticket while she was in the hospital and told that she would have to appear in court at some future time. A person is seized or arrested within the meaning of the Fourth Amendment when, "in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). *See also Florida v. Royer*, 460 U.S. 491, 501 (1983), *United States v. Hastamorir*, 881 F.2d 1551, 1556 (11th Cir. 1989).

Circumstances that indicate an arrest has occurred include the blocking of an individual's path, or the impeding of his progress, the display of weapons, the number and demeanor of officers present, the length of the detention, and the extent to which the officers physically restrained the individual. *Hastamorir*, 881 F.2d at 1556, *citing United States v. Hammock*, 860 F.2d 390 (11th Cir. 1988) (list is not exclusive). Ms. Owens' initial contact with the police, the car accident, is not alleged to have been intentional or deliberate. Respondent Hewell did not "arrest" Ms. Owens by accidentally crashing into her. The word "seizure" "can hardly be applied to an unknowing act." *Brower v. County of Inyo*, 489 U.S. 593, 596 (1989). *See Campbell v. White*, 916 F.2d 421, 422-23 (7th Cir. 1990); *Apodaca v. Rio Arriba County Sheriff's Department*, 905 F.2d 1445, 1447 (10th Cir. 1990); *Roach v. City of*

Fredericktown, 882 F.2d 294, 296-97 (8th Cir. 1989) (collision between police officer who did not activate siren in violation of state law and another car did not constitute a seizure where officer did not intend for pursuit to end by means of an accident). Petitioners contend that the officers arrested or seized Ms. Owens when she was given a traffic ticket while she was in the hospital and Trooper George told her she would have to appear in traffic court on March 30, 1992. Petitioners have alleged no other facts concerning the manner in which the ticket was given to her and do not allege that she was interrogated, taken into custody, handcuffed, fingerprinted, photographed, or otherwise "booked-in" on the traffic charge. While Ms. Owens was apparently confined to a hospital bed by medical personnel, she does not allege that the *police* restrained her while she was in the hospital, physically or otherwise. *See United States v. Martin*, 781 F.2d 671, 673 (9th Cir. 1986) and *United States v. Lunt*, 732 F.Supp. 599, 604 (W.D. Pa. 1990) (questioning a hospital patient was not an "arrest" and the patient was not "in custody" so as to require *Miranda* warnings).

Under the circumstances articulated by the Eleventh Circuit Court of Appeals in *Hastamorir* and *Hammock*, it is clear Ms. Owens was never arrested or seized within the meaning of the Fourth Amendment. Petitioner has alleged that only one officer was present when she was given the ticket. She does not allege that numerous officers surrounded her, nor that any weapons were brandished, nor that Trooper George physically touched her, detained her for any length of time, or exhibited a hostile or threatening demeanor.

Petitioners' primary argument that Ms. Owens was "seized" within the meaning of the Fourth Amendment is that once she was charged with a violation of O.C.G.A. § 40-6-74, she was subject to being found guilty of a misdemeanor that carried a possible punishment of up to one (1) year imprisonment. Petitioner argues that once she was cited for this offense, she was subject to incarceration and that, consequently, her freedom of movement and liberty interests were curtailed. Petitioners cite to *United States v. Marion*, 404 U.S. 307, 320 (1971) in support of their position. However, in *Marion*, this Court focused on governmental action that will trigger an accused's Sixth Amendment right to a speedy trial, not the parameters of a Fourth Amendment seizure. *Id.* The protections of the speedy trial clause come into existence through "either a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge. . . . " *Id. Marion* does not equate arrest and ultimate prosecution for purposes of the Fourth Amendment in the manner petitioners contend. Though Ms. Owens may have been an "accused" for purposes of the Sixth Amendment right to a speedy trial, she had not been arrested or seized for purposes of Fourth Amendment protection.

Respondents respectfully submit that the *possibility of future incarceration*, even with its accompanying anxiety and concern, is not the legal equivalent of a present seizure or an immediate restraint on an individual's freedom of movement. The district court correctly ruled even though Ms. Owens may have been *subject* to arrest or *subject* to imprisonment, she simply was not "arrested" on March 30, 1992 when she received a traffic ticket.

Petitioners rely on this Court's decision in *Albright v. Oliver*, 510 U.S. ___, 62 L.W. 4078 (1994) to support their petition for certiorari, contending that this decision left open the question of whether a prosecution without probable cause is actionable under § 1983 as a violation of the Fourth Amendment, even if there has been no pretrial deprivation of liberty. In *Albright*, the petitioner had been arrested and prosecuted without probable cause. *Id.* at 4079. He brought an action under 42 U.S.C. § 1983 based upon his substantive due process right to be free from prosecution without probable cause. *Id.* This Court affirmed the district court's dismissal under Rule 12(b)(6), holding that "it is the Fourth Amendment, and not substantive due process, under which petitioner Albright's claims must be judged. . . . Petitioner [does not] claim a violation of his Fourth Amendment rights, notwithstanding the fact that his surrender to the State's show of authority constituted a seizure for purposes of the Fourth Amendment." *Id.* at 4079.

This Court did not address a Fourth Amendment claim in *Albright* because none had been raised by the petitioner. The Court did not thereby intend to leave open the question of whether a prosecution without probable cause is actionable under the Fourth Amendment where there has been no arrest or incarceration, as petitioner argues. This Court did not indicate that it would address this issue if presented with a more factually appropriate case. Even if the Court had expressed such an intention, however, petitioners' case does not present a valid claim for a Fourth Amendment violation since petitioner

Owens was not arrested or "seized" within the meaning of that amendment.

CONCLUSION

Under the facts as alleged by petitioners, Ms. Owens was simply not arrested or seized when she was given the citation. Her path was not blocked and her progress was not impeded by the police. No weapons were drawn, no detention occurred, and she was not touched or restrained by the police in any way. In giving Ms. Owens the ticket, the officer simply notified her that she was being charged with causing the accident and violating a traffic law. She was informed that she must appear in court to answer the charge, but at the time she had this encounter with the police she was free to leave, if not for her injuries and medical treatment. Even when these facts as pled by the petitioners are viewed in the light most favorable to them, it is clear Ms. Owens was not arrested. Petitioners' claim is not actionable under 42 U.S.C. § 1983 because there has been no violation of a constitutional right upon which to base § 1983 liability. The district court properly granted the respondents' motion to dismiss petitioners' Fourth Amendment claims, and its decision is fully supported by the record.

For these reasons, respondents Hewell and the City of Loganville respectfully urge the Court to deny the Petition for a Writ of Certiorari to the Eleventh Circuit Court of Appeals.

Respectfully submitted,

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APPENDIX OF RESPONDENTS

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 93-8588

D.C. Docket No. 1:93-CV-251-MHS

MARY OWENS, CLARENCE E. OWENS,
PLAINTIFFS-APPELLANTS,

VERSUS

TERRY LYNN HEWELL, INDIVIDUALLY AND IN HIS CAPACITY AS A POLICE OFFICER FOR THE CITY OF LOGANVILLE, GEORGIA; BRIAN GEORGE, individually as a Trooper for the Georgia State Patrol; CITY OF LOGANVILLE,
Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(January 7, 1994)

Before TJOFLAT, Chief Judge, CARNES, Circuit Judge, and MERHIGE*, Senior District Judge.

PER CURIAM:

AFFIRMED, *See* 11th Cir. R. 36-1.

"Costs taxed against plaintiffs-appellants."

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* Honorable Robert R. Merhige, Jr., Senior U.S. District Judge for the Eastern District of Virginia, sitting by designation.

Judgment Entered: January 7, 1994
For the Court: Miguel J. Coretz, Clerk

By: /s/ Matt Davidson

Deputy Clerk

ISSUED AS MANDATE: 3/11/94

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action 1:93-cv-251-MHS

MARY OWENS and CLARENCE OWENS,
Plaintiffs,

v.

TERRY LYNN HEWELL, *et al.*,
Defendants.

ORDER

This action is before the Court on defendants' motions to dismiss. For the reasons stated below, the Court grants the motions.

In October 1991, a police car driven by defendant Officer Terry Lynn Hewell struck plaintiff Mary Owens's car when plaintiff's car entered an intersection. While plaintiff was being treated in a hospital for her injuries, defendant Hewell and defendant Brian George, the Georgia State Patrol officer who investigated the collision, gave plaintiff a traffic citation charging her with violating a state law requiring motorists to yield to an approaching emergency vehicle. At county traffic court, plaintiff's traffic citation was dismissed since defendant Hewell did not have on his siren before the accident occurred.

Plaintiff brings this action under 42 U.S.C. § 1983, claiming that defendants subjected her to an illegal arrest in violation of the Fourth Amendment and maliciously

prosecuted her in violation of the Fifth Amendment. Plaintiff has supplemental state law claims for false arrest, malicious prosecution, intentional infliction of emotional distress, negligence, and loss of consortium; plaintiff also seeks punitive damages. Defendants City of Loganville and Hewell move to dismiss on the ground that plaintiff has failed to state a claim upon which relief can be granted, and defendant George moves to dismiss on the ground of qualified immunity.

I. MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

The Court first examines defendants City of Loganville and Terry Lynn Hewell's motion to dismiss for failure to state a claim upon which relief can be granted. Under Federal Rule of Civil Procedure 12(b)(6), a district court can dismiss an action for failure to state a claim upon which relief can be granted only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Fundiller v. City of Cooper City*, 777 F.2d 1436, 1439 (11th Cir. 1985) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

Defendants City of Loganville and Terry Lynn Hewell first argue that plaintiff has failed to state a claim for illegal arrest under the Fourth Amendment. Specifically, defendants argue that they cannot be liable to plaintiff for an illegal arrest under the Fourth Amendment because plaintiff was never arrested, even when defendants gave her a traffic citation in the hospital. In response, plaintiff argues that she was subject to arrest

and imprisonment of up to one year for her alleged violation of O.C.G.A. § 40-6-74(a) (1991), and that if she had not appeared at traffic court, she would have been arrested.

Generally, a person is seized within the meaning of the Fourth Amendment only if, considering the surrounding circumstances of the incident, a reasonable person would believe that she was not free to leave. *United States v. Mendenhall*, 446 U.S. 544, 554 (1980); *cf. Florida v. Roper*, 460 U.S. 491, 498 (1983). Construing the pleadings in favor of plaintiff, the Court concludes that plaintiff's being subject to arrest or subject to imprisonment is not an arrest. Nor is defendants' giving plaintiff a traffic citation while she was in the hospital an arrest. *See United States v. Martin*, 781 F.2d 671, 673 (9th Cir. 1985); *United States v. Lunt*, 732 F. Supp. 599, 604 (W.D. Pa. 1990). Further, no evidence shows that plaintiff was in custody at the time she appeared in county traffic court. On these facts, plaintiff has failed to make out a claim for illegal arrest under the Fourth Amendment.

Defendants City of Loganville and Hewell next argue that plaintiff has failed to state a claim for malicious prosecution under the Fifth Amendment. Defendants argue that while a claim for malicious prosecution can rise to a constitutional deprivation, plaintiff has not alleged that defendants used governmental power in an egregious or shocking way and therefore violated plaintiff's constitutional rights. Plaintiff argues that she has made out a claim for malicious prosecution under Georgia law.

Generally, a malicious prosecution claim can support a claim for relief under § 1983. *NAACP v. Hunt*, 891 F.2d 1555, 1563 (11th Cir. 1990). The majority of circuits, however, hold that § 1983 provides a remedy only if the misuse of the legal proceedings is so egregious that it deprives the plaintiff of a constitutional right. *Torres v. Superintendent of Police*, 893 F.2d 404, 409 (1st Cir. 1990). Thus, a plaintiff must not only prove the elements of malicious prosecution under state law,[1] but also must show egregious conduct by the governmental official that rises to the level of a constitutional deprivation. *Id.*

Construing the pleadings in favor of plaintiff, the Court concludes that plaintiff has failed to state a claim for malicious prosecution that amounts to a violation of § 1983. Plaintiff has not shown an egregious misuse of legal proceedings that deprived her of a constitutional right. Defendants had a reasonable basis for charging plaintiff with violating section 40-6-74(a), and no evidence suggests that defendants had any discriminatory, retaliatory, or unconstitutional motive for giving plaintiff the traffic citation. Plaintiff then has also failed to state a claim for malicious prosecution under § 1983.

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[1] Under Georgia law, a plaintiff bringing a malicious prosecution claim must prove the following elements: (1) prosecution for a criminal offense; (2) the prosecution was instigated under a valid warrant, accusation, or summons; (3) termination of the prosecution in favor of the plaintiff; (4) malice; (5) lack of probable cause; and (6) damage to the plaintiff. *Medoc Corp. v. Keel*, 166 Ga. App. 615, 615-16 (1983).

II. MOTION TO DISMISS ON QUALIFIED IMMUNITY DEFENSE

The Court next examines defendant Brian George's motion to dismiss on the ground that he is entitled to the defense of qualified immunity.[2] Plaintiff argues that defendant George is not entitled to the defense on these facts. Under the "objective-reasonableness" test, a court must evaluate a government official's action against clearly established federal statutory or constitutional rights of which a reasonable person would have knowledge. *Courson v. McMillian*, 939 F.2d 1479, 1487 (11th Cir. 1991). District courts should not focus on the official's subjective good faith in § 1983 actions but rather on whether a reasonable official under the circumstances would have known that his conduct violated clearly established law. *Id.* Qualified immunity protection is usually provided to "all but the plainly incompetent or those who knowingly violate the law." *Id.* (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)).

This Circuit has adopted a two-part analysis for applying the objective-reasonableness test to a qualified immunity defense. *Id.* First, the defendant public official must show that he acted within the scope of his discretionary authority when the allegedly wrongful act occurred. *Id.* Second, after the defendant has shown that he acted within the scope of his discretionary authority, the burden shifts to the plaintiff to show that the defendant lacked good faith, that is, that the defendant's acts

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[2] Plaintiff also brought her claims for illegal arrest and malicious prosecution against defendant George.

violated clearly established statutory or constitutional law. *Id.* The second part of the analysis requires the Court to determine whether the applicable law was clearly established when the government action in question occurred and then whether the government official's conduct was in violation of clearly established law. *Id.* at 1487-88.

On these facts, the Court concludes that defendant George is entitled to the defense of qualified immunity on plaintiff's Fourth Amendment claim of illegal arrest and Fifth Amendment claim of malicious prosecution. Defendant George acted within the scope of his discretionary authority when he gave plaintiff her traffic citation. Further, a reasonable officer under these circumstances would have believed that giving plaintiff the traffic citation in this instance did not amount to an illegal arrest or malicious prosecution and therefore comported with the Fourth and Fifth Amendments. *Anderson v. Creighton,* 483 U.S. 635, 647 (1984). As concluded above, there is no factual basis for an illegal arrest or malicious prosecution in this action.

III. PLAINTIFF'S SUPPLEMENTAL STATE LAW CLAIMS

Defendants urge the Court to decline to exercise supplemental jurisdiction over plaintiff's state law claims under 28 U.S.C. § 1367(c). While the exercise of supplemental jurisdiction is discretionary, *see Hubbard v. Stewart,* 651 F. Supp. 294 (M.D. Ga. 1987), if a district court dismisses a plaintiff's federal claims before trial, then, under *United Mine Workers v. Gibbs,* 383 U.S. 715, 726 (1966), the

court must dismiss the plaintiff's supplemental state law claims. *L.A. Draper & Son v. Wheelabrator-Frye, Inc.*, 735 F.2d 414, 428 (11th Cir. 1984); *accord Homes by Michelle, Inc. v. Federal Savings Bank*, 733 F. Supp. 1495, 1498 (N.D. Ga. 1990). Therefore, the Court dismisses plaintiff's state law claims.

IV. CONCLUSION

In summary, the Court GRANTS defendants City of Loganville and Terry Lynn Hewell's motion to dismiss [#4-1], GRANTS defendant Brian George's motion to dismiss [#5-1], and DISMISSES plaintiff's remaining state law claims.

IT IS SO ORDERED, this 27 day of April, 1993.

/s/ Marvin H. Shoob,
Senior Judge
United States District Court
Northern District of Georgia

ENTERED ON DOCKET
Apr. 29, 1993

By L.D.T., Clerk
Deputy Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 1:93-cv-251-MHS

MARY OWENS, *et al.*,

Plaintiffs,

vs.

TERRY LYNN HEWELL, *et al.*,

Defendants.

JUDGMENT

This action having come before the court, Honorable Marvin H. Shoob, United States District Judge, for consideration of the defendants' motions to dismiss, and the court having granted said motions, it is

Ordered and Adjudged that the plaintiff take nothing, that the defendants recover their costs of this action, and the action be, and the same hereby is **dismissed.**

Dated at Atlanta, Georgia, this 29th day of April, 1993.

LUTHER D. THOMAS
Clerk

By: /s/ Sherry Gibbons
SHERRY GIBBONS
Deputy Clerk

Prepared, Filed, and Entered in the
Clerk's Office
April 29, 1993

LUTHER D. THOMAS
Clerk

By: /s/ Sherry Gibbons
SHERRY GIBBONS
Deputy Clerk

APPENDIX D

[Filed Feb. 25, 1994]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 93-8588

MARY OWENS, CLARENCE E. OWENS,
Plaintiffs-Appellants.

versus

TERRY LYNN HEWELL, individually and in his capacity as a Police Officer for the City of Loganville, Georgia, BRIAN GEORGE, individually as a Trooper for the Georgia State Patrol, CITY OF LOGANVILLE,
Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Georgia

ON PETITION(S) FOR RREHEARING AND
SUGGESTION(S) OF REHEARING EN BANC

Before: TJOFLAT, Chief Judge, CARNES, Circuit Judge, and MERHIGE*, Senior District Judge.

PER CURIAM:

(X) The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be

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* Honorable Robert R. Merhige, Jr., Senior U.S. District Judge for the Eastern District of Virginia, sitting by designation.

polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Gerald B. Tjoflat
Chief Judge